

Pursuant to the Court's Minute Order of April 27, 2011, defendant Steven Dwight Hammond, by and through his attorneys Lawrence H. Matasar and Lawrence Matasar, P.C., and defendant Dwight Lincoln Hammond, Jr., by and through his attorneys Marc D. Blackman and Ransom Blackman LLP, submit the following supplemental Points And Authorities in support of their Motion for Trial in the Pendleton Division:

POINTS AND AUTHORITIES

A. Additional Factual Information

On April 25, 2011, pursuant to Chief Judge Aiken's Order, the parties were provided the April 1, 2011 Master Jury Wheels and the April 1, 2011 Random Selection for [Juror] Eligibility for each Division of the Court. Copies of these documents are appended hereto as Exhibits 4 and 5. These records establish that the majority of prospective jurors in a case heard in the Eugene Division are likely to come from its most urban counties - Lane [30.46%] and Marion [21.48%]. They also establish that more than a quarter of the remaining prospective jurors [13.42%] would likely come from Deschutes County, which became substantially more urban [64.5%] in the last decade. *See Deschutes County Coordinated Population Forecast*, appended hereto as Exhibit 6. As a result, 60.59% of the persons in a jury pool in the Eugene Division would likely come from urban communities and only 39.41% from rural settings.

The Jury Wheel and Random Selection data for the Pendleton Division establish that 42.54% of likely jurors would come from counties with no urban centers [Baker,

Crook, Gilliam, Grant, Harney, Malheur, Morrow, Sherman, Wallowa, and Wheeler] and the balance from counties that remain primarily rural [Umatilla, where 56.39% of the population lives outside Hermiston and Pendleton, and Union, where 49.2% live outside La Grande]. *See* 2011-2012 Oregon Blue Book at 249-54, appended hereto as Exhibit 7. Defendants believe the Court can take judicial notice¹ that while Hermiston [population 16,745], Pendleton [population 16,612] [*see* February 24, 2011 HermistonHerald.com: *Hermiston Overtakes Pendleton in Population*, appended hereto as Exhibit 8] and La Grande [population 11,729] [*see* Jason J. Yohannan, *Eastern Oregon 2010 Population: Some Up, Some Down*, appended hereto as Exhibit 9] may technically/quantitatively qualify as “urban” communities, they are qualitatively different from the population centers of Lane and Marion Counties: Eugene [population 157,845] and Salem [population 157,460]. *See* Brooke Jackson-Winegardner, *Oregon’s City-Dwelling Population Grows*, appended hereto as Exhibit 10. Pendleton, Hermiston, and La Grande are integrated into and for the most part exist to support the rural/agricultural life that surrounds them. The same cannot be said of Salem or Eugene; agricultural activity certainly occurs in Lane and Marion Counties, but it is hardly the *sine qua non* of Eugene [University of Oregon] or Salem [seat of state government].

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¹ Fed. R. of Evidence 201; *United States v. Swope*, 542 F.3d 609, 616 (8th Cir. 2008) [approving trial court’s “taking judicial notice of Anita and Atlantic [Iowa]’s small-town rural-county character.”]

But even if Pendleton, Hermiston, and La Grande were considered as “urban” as Eugene and Salem, a jury pool in the Pendleton Division would still be far more representative of defendants’ community. 67.09% of the prospective jurors in the Pendleton Division live in rural settings; only 32.91% in the “urban centers” of Hermiston, Pendleton, and La Grande.

B. Legal Discussion

The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” This right is personal to the defendant, not the government nor the court. An essential aspect of that right is “the selection of a petit jury from a representative cross section of the community.” *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). Because the right to a trial by jury is personal to the defendant and includes the right to a jury drawn from a representative cross section of “the community,” the relevant “community” is that of the defendant’s. And the right to a jury from that community surely cannot be denied a defendant by a unilateral and ex parte decision by the government for its convenience, when none of the “events or omissions giving rise to the claim occurred” there and no “substantial part of the property that is the subject of the actions is situated” there.

LR 3-2(b).

The statistical data provided by the Court regarding the distinct profiles of jurors in the Eugene and Pendleton Divisions supports defendants’ contention that a jury in the

former would not be representative of their community, while one in the latter would. When combined with the location of the events at issue, the convenience of witnesses, and the personal nature of the right to trial by jury given the defendants by the Sixth Amendment, defendants respectfully urge the Court to recognize that it would be an abuse of discretion to deny their Motion for Trial in the Pendleton Division.

CONCLUSION

For each of the reasons set forth above and in Defendants' Motion For Trial in the Pendleton Division, defendants respectfully urge the Court to grant said Motion.

Dated this 9th day of May, 2011.

Respectfully submitted,

RANSOM BLACKMAN LLP

LAWRENCE MATASAR, P.C.

/s/ MARC D. BLACKMAN

MARC D. BLACKMAN
OSB No. 730338
[503] 228-0487
Of Attorneys for Defendant
Dwight Lincoln Hammond, Jr.

/s/ LAWRENCE H. MATASAR

LAWRENCE H. MATASAR
OSB No. 742092
[503] 222-9830
Of Attorneys for Defendant
Steven Dwight Hammond

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANTS' SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF MOTION FOR TRIAL IN THE PENDLETON
DIVISION; REQUEST FOR ORAL ARGUMENT on the following:

Kirk A. Engdall
Frank R. Papagni, Jr.
Assistant United States Attorneys
United States Attorney's Office
405 East 8th Avenue
Suite 2400
Eugene, OR 97401

by electronic file notice of a true copy on the 9th day of May, 2011.

RANSOM BLACKMAN LLP

/s/ MARC D. BLACKMAN

MARC D. BLACKMAN

OSB No. 730338

[503] 228-0487

Of Attorneys for Defendant

Dwight Lincoln Hammond, Jr.